

REMARKS

Claims 1-16 are pending in the application. Claim 1 has been amended. No new matter has been added.

ARGUMENTS

Claims 8, 10 and 15 are rejected under 35 U.S.C. 112 as failing to comply with the written description requirement. Each of claims 8 and 15 recites a channel having a "closed cross section." Claim 10 recites first, second, and third conduits each having an "inside diameter between 2mm and 5mm." The specification has been amended to address the Examiner's position. Support for the amendments appears in the application as filed, including the claims and the drawings. No new matter has been added.

The applicants respectfully request that the rejection of claims 8, 10, and 15 be withdrawn.

Claims 1-7, 9, 11-12, 14, and 16 are rejected under 35 U.S.C. 103(a) as obvious based on U.S. Publication No. 2002/01018610A1 (Christopher). Each of these claims recites an oropharyngeal device having a body, at least one channel forming an airway, at least one first conduit for conveying an inhalant gas, at least one second conduit for suctioning, and at least one third conduit for sampling exhaled gas. Claim 1, as amended, recites that the body is sized such that when the distal end is inserted into the mouth of the patient until the proximal end is adjacent the mouth, the distal end is disposed within the pharynx above the epiglottis and at a distance from the epiglottis. Support for the amendment of claim 1 appears in Figure 1E of the drawings as filed.

Christopher discloses a guide (25) for intubating a patient with an endotracheal tube. Endotracheal tubes are used in semi-emergency situations to ventilate patients with respiratory failure. Such tubes may be difficult to place because the distal end of the tube must be advanced through the patient's larynx (18) and into the trachea (16). See paragraphs [0005] and [0006] of Christopher regarding the problems addressed in Christopher. To facilitate the placement of an endotracheal tube (40) into the trachea, the guide (25) of Christopher engages

the epiglottis (17). See, e.g., the contact between the guide (25) and the epiglottis of the patient in each of Figures 1, 9, 10 and 15.

Christopher, therefore, fails to disclose or suggest an oropharyngeal device having a body sized such that when the distal end of the body is inserted into the mouth of the patient until the proximal end is adjacent the patient's mouth, the distal end is disposed within the pharynx *above the epiglottis and at a distance from the epiglottis*. Instead, as discussed above, Christopher teaches away from the recited oropharyngeal device by teaching a guide for an endotracheal tube that engages the epiglottis to facilitate placement of the endotracheal tube through the larynx and into the trachea.

For the foregoing reasons, claim 1 is not rendered obvious from Christopher. Each of claims 2-7, 9, 11-12, 14 and 16 depends from claim 1 (or recites the oropharyngeal device of claim 1 in the case of claim 16). Therefore, for the same reasons as claim 1, none of claims 2-7, 9, 11-12, 14 and 16 is rendered obvious from Christopher.

Claim 7 further recites that the at least one channel forming an airway in the oropharyngeal device channel has a U-shaped cross section. The Examiner asserts at page 3 that lumens (130) and (140) of the Christopher device are situated in channels having U-shaped cross section. A review of Christopher fails to reveal such disclosure. Christopher teaches that lumens (130) and (140) may be a small tube bonded to a surface of the guide or may be "formed as a conduit" within the wall of the guide (25). See, e.g., paragraphs [0036] and [0038] and Figure 6. Contrary to the assertion by the Examiner, Christopher does not disclose or suggest an airway channel having a U-shaped cross-section.

For this additional reason, therefore, claim 7 is not obvious from Christopher.

The applicants respectfully request that the rejection of claims 1-7, 9, 11-12, 14 and 16 based on Christopher be withdrawn.

Claim 13 is rejected under 35 U.S.C. 103(a) as obvious based on Christopher and U.S. Pat. No. 3,756,244 (Kinneer). Claim 13 depends from claim 1 and further recites a flange at the proximal end of the device.

Again, Christopher fails to teach an oropharyngeal device having a body sized such that when the distal end of the body is inserted into the mouth of the patient until the

proximal end is adjacent the patient's mouth, the distal end is disposed within the pharynx *above the epiglottis and at a distance from the epiglottis*. As discussed above, Christopher actually teaches away from the claimed device by teaching a guide for an endotracheal tube that engages the epiglottis to facilitate passage of the endotracheal tube through the larynx and into the trachea.

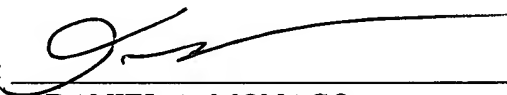
Kinnear discloses an airway (10) and is cited by the Examiner for showing a flange (16) at an end of the airway (10). Claim 13 is not rendered obvious from Christopher and Kinnear.

For the foregoing reasons, the applicants respectfully request that the rejection of claim 13 based on Christopher and Kinnear be withdrawn.

It is submitted that the application is now in condition for allowance. If the Examiner believes that direct communication would advance prosecution, the Examiner is invited to telephone the undersigned.

Respectfully submitted,

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